THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22751 of 2006

Dated: 20-11-2006

Between:

B. Sudershan.

..... PETITIONER

AND

The Assistant Divisional Engineer (Operation), APCPDCL, Kollapur, Mahaboobnagar District and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

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ORDER:

The petitioner is a lessee of premises bearing house No.7-76/6 (malgi) situated near bus stand Pentlavelly Village of Kollapur Mandal in Mahaboobnagar District. He is availing power supply under service connection No.979 (Category-III) for his lathe machine. ADE/DPE-II, Mahaboobnagar, on 20-09-2006 inspected the premises and it was allegedly found that the petitioner tampered with the meter cover and that he is resorting to theft of electricity. Therefore, respondent No.1 issued provisional assessment notice/order dated 04-10-2006 estimating the value of energy pilfered at Rs.1,26,970/-, disconnected power supply and advised the petitioner to pay half of the estimated value if he desires to obtain reconnection. The said provisional assessment notice is assailed in this writ petition.

The learned counsel for the petitioner, while denying the allegations made in the impugned notice, submits that the petitioner obtained electricity connection only in July, 2006 and therefore, the estimated value allegedly pilfered is arbitrary and illegal under Section 126(5) of the Electricity Act, 2003 (the Act, for brevity). He fairly submits that the petitioner is running lathe machine in a rented house and by no stretch of imagination the petitioner can be alleged to have pilfered such huge energy as estimated.

At the stage of admission itself, respondent No.1 filed a counter-affidavit ,*inter alia,* stating that after issuing impugned provisional assessment notice, a crime, being F.I.R.No.4823 of 2006, has been registered with Anti Power Theft Squad Police Station, Mahaboobnagar, and that the respondents followed procedure contemplated under the Act. It is also stated that whether the petitioner has pilfered the energy valued at the amount mentioned in the impugned notice is a question of fact requiring notice and a writ petition would not lie.

The learned counsel for the petitioner and the learned standing counsel for APCPDCL reiterated their positions taken in the pleadings.

Chapter XIV of the Act deals with offences and penalties. When once a case of theft of electricity is registered, the power to adjudicate vests with the Special Court constituted under Section 153 of the Act. The power enables the Special Court as per Section 154 of the Act to determine the criminal liability of the person allegedly involved in a case of theft of electricity. There is no denial that a crime has already been registered and therefore, it would not be proper for this Court to entertain the writ petition. Even assuming that such criminal case had not been

registered by the respondents, still the petitioner had an opportunity to approach the final assessment officer and submit explanation. The petitioner has not even filed such explanation. Therefore, no indulgence can be shown to the petitioner. The petitioner has to approach the Special Court for appropriate orders in the matter.

The writ petition, with the above observations, is accordingly dismissed. No costs.

V.V.S.RAO, J

20th November, 2006
ghn